

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

MATTHEW HELDE, CRYSTAL HELDE, SHANE HELDE, SLADE HELDE , each individually and through the ESTATE OF DONALD HELDE , through its Personal Representative, JEAN VELO , Plaintiffs, v. A & K LOGISTICS, INC. , a Pennsylvania corporation, PHILLIPS FEED SERVICE, INC , a Pennsylvania corporation, BRYON K. ANGLE , and UNKNOWN DEFENDANTS A – D, jointly and severally, Defendant	Civ. <u>22-5072</u> COMPLAINT
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Plaintiffs, Matthew Helde, Crystal Helde, Shane Helde, Slade Helde, each individually and through the Estate of Donald Helde, through its Personal Representative, Jean Velo, (collectively “Heldes”), for their causes of action against Defendants, A & K Logistics, Inc. (“A & K”), a Pennsylvania corporation, Phillips Feed Service, Inc. (“Phillips”), a Pennsylvania corporation, and Bryon K. Angle (“Angle”), jointly and severally allege:

INTRODUCTION

1. This action arises from the fatal injuries suffered by Donald Gene Helde (“Donald”) on February 11, 2021, while traveling on U.S. Highway 85, near mile post 69 north of Belle Fourche, Butte County, South Dakota. He was killed when Angle, driving a tractor/semi-trailer unit operated by A & K, Inc., crossed the median/centerline, causing a head-on collision with Donald, who died at the scene from his injuries.

PARTIES

2. Plaintiff Matthew Helde, son of Donald, is a citizen of the state of Minnesota.

3. Plaintiff Crystal Helde, daughter of Donald, was at relevant times a citizen of the state of North Dakota and is now a citizen of the state of South Dakota.

4. Plaintiff Shane Helde, is a son of Donald, is a citizen of the state of Wyoming.

5. Plaintiff Slade Helde also a son of Donald, and is a citizen of the state of North Dakota.

6. On April 7, 2021, the District Court for Burke County, North Dakota, appointed Jean Velo, as Personal Representative of the Estate of Donald Helde.

7. Defendant A & K Logistics is a Pennsylvania corporation, with its principal place of business in the state of Pennsylvania. Upon information and belief, it is authorized to do business in the states of Montana, South Dakota, and elsewhere.

8. Defendant Phillips Feed Service, Inc. is a Pennsylvania corporation, with its principal place of business in the state of Pennsylvania. Upon information and belief, it is authorized to do business in the states other than the state of Pennsylvania. It is believed to have employed Angle at the times relevant to this action.

9. Defendant Bryon K. Angle was, at the time, a citizen of the state of Montana.

10. “Unknown Defendants A – D” are those unknown entities that, at times relevant to this litigation either provided or should have provided supervision to Angle or otherwise committed acts or failed to perform acts that caused in whole or in part, the negligent and/or reckless acts that form the basis of this litigation.

VENUE AND JURISDICTION

11. The jurisdiction of this Court is invoked under the authority of 28 USC § 1332 in that the Plaintiffs and the Defendants are of diverse citizenship and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.

12. Venue in this action is in the District of South Dakota under the authority of 28 USC § 1391 as the negligent acts giving rise to this claim occurred in this district.

GENERAL ALLEGATIONS

13. On February 11, 2021, at approximately 8:19 am, Defendant Angle was driving a 2017 Freightliner tractor/semi-trailer unit on U.S. Highway 85, 0.34 miles north of mile marker 69 near Belle Fourche, South Dakota.

14. The tractor/semi, owned by Ryder Truck Rental, Inc., was leased to Defendants Phillips, A & K, and/or unknown Defendants.

15. U.S. Highway 85 at this location is a two-lane highway, with a north bound lane and a south bound lane.

16. Donald was traveling northbound on U.S. Highway 85 at the time of the collision.

17. Angle, following a South Dakota Department of Transportation snowplow, chose to pass the snowplow without having a clear and safe line of sight.

18. The tractor/semi-trailer unit Angle was operating, collided head-on with the 2015 Acadia driven by Donald.

19. Donald suffered injuries, including fright, terror and mental anguish, and died from his physical injuries at the scene.

20. After Donald's death, counsel for the Plaintiffs delivered a 'Notice of Representation and Preservation of Evidence' letter to A & K, Attention Blaine Phillips,

President, on February 18, 2021. The Notice directed Phillips, A & K, its principals, and related entities, to preserve all evidence of the crash that claimed Donald's life, including the maintenance and inspection records of Defendants' equipment involved in the crash, Angle's driving history while with A & K or any related entities. The Notice specifically requested preservation of all electronic data and documents that may be related to the crash.

21. Upon information and belief, Defendants, individually or collectively, have failed to preserve the evidence requested in the February 11, 2021 Notice, and having failed to preserve it, whether by destruction or loss, its thereby prevents Plaintiffs' access to relevant and important data concerning the precise nature of the crash, including but not limited to Angle's actions or inactions immediately before the collision.

**COUNT ONE
WRONGFUL DEATH
NEGLIGENCE AND NEGLIGENCE *PER SE*
(ALL DEFENDANTS)**

22. Angle negligently operated the tractor/semi-trailer unit causing the collision with Donald.

23. Angle violated [SDCL § 32-26-6](#), which provides:

On a roadway divided into lanes, a vehicle shall be driven as nearly as practicable entirely within a single lane and may not be moved from such lane until the driver has first ascertained that such movement can be made with safety. A violation this section is a Class 2 misdemeanor.

24. Angle violated [SDCL § 32-26-34](#):

No driver of a vehicle may drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made and in safety. A violation of this section is a Class 2 misdemeanor.

25. Angle violated [SDCL § 32-26-40](#) which provides:

The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and condition of the highway. A violation of this section is a Class 2 misdemeanor.

26. Angle violated SDCL § 32-25-3 which provides:

It is a Class 2 misdemeanor for any person to drive a motor vehicle on a highway located in this state at a speed greater than is reasonable and prudent under the conditions then existing or at speeds in excess of those fixed by this chapter or provided by the Transportation Commission.

27. Angle's operation of the tractor/semi-trailer unit was negligent.

28. The negligence of Angle was the legal cause of the injuries and death suffered by Donald.

29. At all times material, Angle was an agent of A & K, Phillips, and/or unknown entities, acting in the course and scope of his agency and authority of each.

30. As legal cause of the negligent acts and omissions of Angle, Donald suffered grave and life-ending injuries.

31. As a legal result of the negligent acts and omissions of Angle, Plaintiffs Heldes have been wrongfully deprived of their father Donald's companionship, society, advice, economic and non-economic support, and instruction. In addition, the Estate has been damaged in amount to be determined by a jury.

**COUNT TWO
WRONGFUL DEATH
NEGLIGENT HIRING/RETENTION
(A & K LOGISTICS, PHILLIPS, AND UNKNOWN ENTITIES)**

32. At the time of this occurrence, Angle was employed by A & K, Phillips, and/or unknown entities, and was also considered a statutory employee of A & K, Phillips, and/or unknown entities, by virtue of federal law.

33. At all times material, Angle was an agent of A & K, Phillips, and/or unknown entities, and was acting in the course and scope of his agency and authority.

34. [49 CFR § 376.12](#) creates a presumption that the tractor/semi was driven within the scope of the authority granted by the carrier, A & K, Phillips, and/or unknown entities, and the tractor/semi was driven within the scope of that authority at the time of this occurrence.

35. [49 CFR § 376.12\(j\)](#) required the carrier, A & K, Phillips, and/or unknown entities, to maintain insurance coverage for the protection of the public pursuant to FMCSA Regulations under the authority of [49 U.S.C. § 13906](#).

36. At the time of the occurrence, the tractor/semi displayed the USDOT No. 1094779 that is assigned to A & K, Phillips, and unknown entities.

37. At the time of this occurrence A & K, Phillips, and/or unknown entities, had the authority and the duty to control the operation of the tractor/semi.

38. At the time of this occurrence, Angle was an operator of a commercial motor vehicle who directly affected commercial motor vehicle safety in the course of employment and an employee under [49 USC § 31132\(2\)](#).

39. At the time of this occurrence, A & K, Phillips, and/or unknown entities, were persons engaged in a business affecting interstate commerce and owned a commercial motor vehicle in connection with that business and assigned an employee to operate it, namely, Angle, and is considered employers under [49 USC § 31132\(3\)\(A\), \(B\)](#).

40. At the time of this occurrence, A & K, Phillips, and/or unknown entities were persons engaged in a business affecting interstate commerce that leased a motor vehicle in connection with that business and are considered employers under [49 USC § 31132\(3\)\(A\), \(B\)](#).

41. A & K, Phillips, and/or unknown entities retained a right to control the operation of the tractor/semi-trailer unit.

42. Under the authority of 49 CFR §§ 376.12 and 376.12(c)(1), A & K was required to enter into and perform a lease which provided that A & K “shall assume complete responsibility for the operation of the equipment for the duration of the lease” and that A & K, “shall have exclusive possession, control and use of the equipment for the duration of the lease.”

43. These provisions of law provide that A & K, Phillips, and unknown entities, are legally responsible for negligence of Angle committed in the course and scope of the authority granted by A & K, Phillips, and/or unknown entities, and their employees under the lease.

44. The negligence of Angle was committed in the course and scope of the authority granted by A & K, Phillips, and/or unknown entities to A & K, Phillips, and unknown entities, and their employees under the lease.

45. As a legal cause of the negligent acts and omissions of Angle and A & K, Phillips, and/or unknown entities, Donald suffered fatal injuries.

46. As a legal result of the negligent acts and omissions of Angle and A & K, Phillips, and/or unknown entities, Plaintiff Helder has been wrongfully deprived of their father Donald’s companionship, society, advice, economic and non-economic support, and instruction. In addition, the Estate has been damaged in amount to be determined by a jury.

**COUNT THREE
(UNKNOWN DEFENDANTS A – D)**

47. Unknown Defendants A – D who, at the time of the incident which is the basis of this litigation, either provided supervision or should have provided supervision to Angle, or were otherwise responsible for his safe operation of the Defendants’ equipment, which Unknown

Defendants A – D failed to do under circumstances that are negligent, and/or reckless, willful, wanton and/or intentional with regard to the safety and welfare of Donald.

48. Unknown Defendants A – D were generally and specifically aware of and knew the hazards associated with employing drivers of tractor/semi-trailer units in the manner prescribed by applicable law.

49. At and prior to the time of the incident, which is the basis of this litigation, Unknown Defendants A – D, although aware that the hazards in the failing to properly monitor employees, failed to do so with respect to Angle's operation of the tractor/semi-trailer unit that was the cause of the incident which is the basis of this litigation.

50. Having the authority over Angle as an employee, Unknown Defendants A – D had ultimate responsibility for the safety of the public traveling highways in which Angle was operating the tractor/semi-trailer unit.

51. Unknown Defendants A – D negligently and/or recklessly, willfully, wantonly, and/or intentionally disregarded the need to act to prevent Angle from operating the tractor/semi-trailer unit in a manner that created a high probably of serious injury or death to others, such as Donald, traveling public highways upon which Angle was operating. This negligent and/or reckless, willful, wanton and/or intentional misconduct subjects Unknown Defendants A – D to liability.

52. Unknown Defendants A – D's misconduct, acts and failures to act were substantial factors in causing Donald's death.

53. As a legal cause of the negligent acts and omissions of Defendants and/or unknown entities, Donald suffered fatal injuries.

54. As a legal result of the negligent acts and omissions of Defendants and/or unknown entities as set out in this Complaint, Plaintiff Heldes have been wrongfully deprived of their father Donald's companionship, society, advice, economic and non-economic support, and instruction. In addition, the Estate has been damaged in amount to be determined by a jury.

**COUNT FOUR
PUNITIVE DAMAGES
(ALL DEFENDANTS)**

55. Upon information and belief, Defendant Angle was speeding, overdriving road conditions, failing to keep a proper lookout, and in violation of other rules of the road as outlined in Paragraphs 13-21 above and as discovery may further reveal.

56. Defendants A & K, Phillips, and/or unknown entities knew, or should have known, that Defendant Angle was operating his tractor/semi-trailer unit in a dangerous manner.

57. The combined acts of the Defendants as set out in this Complaint demonstrates their reckless indifference for which Plaintiffs Heldes are entitled to exemplary damages in an amount to be determined appropriate by a jury.

58. Upon information and belief, Defendants have failed to preserve the evidence requested in the Notice of February 18, 2021. Upon information and belief, such evidence would prove the negligence of Defendants in the acts set out in this Complaint. The failure of Defendants to preserve the evidence is at least reckless, if not willful, wanton, and conceived to avoid or lessen civil liability.

59. These combined acts of Defendants as set out in this action demonstrate reckless indifference for which Plaintiffs Heldes are entitled to exemplary damages in an amount to be determined to be appropriate by a jury.

WHEREFORE, Plaintiffs pray for judgment against the Defendants:

1. For all past and future general and special damages allowed in a survival action under South Dakota law, together with prejudgment interest to the extent allowed by law, in amounts to be determined.

2. For all past and future general and special damages allowed in wrongful death actions on behalf of Donald Helde's children, Charlie "Matt" Helde, Shane Helde, Crystal Helde, and Slade Helde, and all beneficiaries of his Estate, together with prejudgment interest to the extent allowed by the law, in amounts to be determined.

3. For their costs of this lawsuit, including attorneys' fees.

4. For exemplary damages in an amount to be determined by a jury at the time of trial.

5. For such other and further relief as may be just and equitable under the circumstances.

PLAINTIFFS DEMAND TRIAL BY JURY

Dated this 10th day of August, 2022.

BARKER LAW FIRM, LLC

By: /s/Kenneth E. Barker
Kenneth E. Barker
Attorneys for Plaintiffs
10956 SD Highway 34
PO Box 100
Belle Fourche, SD 57717-0100
Tel: (605) 723-8000
Fax: (605) 723-8010
kbarker@barkerlawfirm.com

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Matthew Helde, Crystal Helde, Shane Helde, Slade Helde
and Estate of Donald Helde, through its PR, Jean Velo

(b) County of Residence of First Listed Plaintiff Stearns
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kenneth E. Barker, Barker Law Firm, LLC
PO Box 100, Belle Fourche, SD 57717 (605) 723-8000

DEFENDANTS

A & K Logistics, Inc., Phillips Feed Service, Inc. Bryon K. Angle, and Unknown Defendants A - D,

County of Residence of First Listed Defendant Northampton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

William Garry, Cadwell, Sanford, Deibert & Garry, 200 E. 10th St. Suite 200, Sioux Falls, SD 57104

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC §§ 1391 and 1332

Brief description of cause:

Head-on collision caused fatal injuries

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8-10-22

SIGNATURE OF ATTORNEY OF RECORD

Kenneth S. Barker

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____